

*In Re: Peggy D. Mathes* )  
Tangible Personal Property Account No. 111221 )  
*H.U.M. LLC* ) Davidson County  
Tangible Personal Property Account No. 130235 )  
Tax year 2007 )

The subject property is presently valued for tax purposes as follows:

ACCOUNT	APPRAISAL	ASSESSMENT
130235	\$42,700	\$12,810
111221	\$42,700	\$12,810

On September 28, 2007, the taxpayers filed appeals with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on January 16, 2008 in Nashville. In attendance at the hearing were the appellant Peggy D. Mathes; accountant Thomas B. Bartlett; attorney Jenny L. Hayes, of the Metropolitan Department of Law; and staff appraiser Kenneth Vinson, of the Assessor's office.

Ms. Mathes is a lawyer whose office is located at 20 Academy Place in Nashville. The building there is owned by H.U.M., LLC ("H.U.M."), of which she is the member responsible for handling incoming correspondence.

In 2007, neither Ms. Mathes nor H.U.M. filed a tangible personal property schedule with the Assessor's office by the March 1 statutory deadline. Consequently, the Assessor made "forced" assessments on the accounts in the amounts shown above. The Assessor's office mailed notices of these assessments to the taxpayers on or about May 18, 2007. See Tenn. Code Ann. section 67-5-903.

Ms. Mathes had no recollection of receiving either of the assessment change notices until the day when a "Notice of Final Decision" of the Metropolitan Board of Equalization ("county board"), dated August 16, 2007, arrived.<sup>1</sup> By then, of course, the county board had completed its regular session for that tax year and adjourned. Having no other possible administrative recourse, she initiated these appeals to the State Board.

<sup>1</sup>Inasmuch as the taxpayers had not appealed either of these forced assessments to the county board, it is not entirely clear what prompted its issuance of a decision letter with respect to the H.U.M. account. In any event, due apparently to a reclassification of the type of business, the county board reduced the Assessor's original value on that account (\$48,000) to \$42,700.



At the hearing, based on the information reported on H.U.M.'s completed Tax Schedule "B," Mr. Vinson agreed that the appraised value of its personal property should be reduced to \$10,206. With respect to the other account under appeal, his research of the Assessor's records indicated that Ms. Mathes had not timely reported in the two immediately preceding tax years as well. Mr. Bartlett testified that that the forced assessment on her account (no. 111221) was successfully appealed to the county board in tax year 2006.

The validity of a forced assessment (or any other change of assessment) does not, of course, depend on whether notice of such assessment is actually received by the taxpayer. Rather, Tenn. Code Ann. section 67-5-903(c) merely requires that the assessor send the notice to the taxpayer's "last known address" at least five days before the commencement of the county board's annual session on June 1. In the instant case, the record satisfactorily establishes that the Assessor's office met this requirement.

A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and state boards of equalization; however, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

The General Assembly has enacted the following exception to this jurisdictional prerequisite:

The taxpayer shall have the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the (State Board) shall accept such appeal from the taxpayer up to March of the year subsequent to the year in which the time for appeal to the state board began to run.

Tenn. Code Ann. section 67-5-1412(e), as amended by Chapter No. 133 of the Public Acts of 2007.

Over the years, a number of requests for acceptance of direct appeals under the "reasonable cause" statute have been predicated on the alleged non-receipt or delayed receipt of assessment change notices. In the case of Michael & Stephanie Davis (Davidson County, Tax Year 1993, Final Decision and Order, November 13, 1995), the Assessment Appeals Commission held that:

...[T]here was testimony only that the (assessment change) notice was not received, and **we find no basis in this fact alone to demonstrate reasonable cause for failure to appeal to the county board of equalization.** [Emphasis added.]

*Id.* at p. 1.

Later, the Commission reached a different result in another instance where the taxpayer claimed not to have received a correctly-addressed assessment change notice. Mary M.



Headrick and Detlef R. Matt (Knox County, Tax Year 1993, Order Recognizing Jurisdiction and Remanding the Appeal for a Hearing, November 5, 1996). But the evidence adduced in that proceeding tended to show a history of mail delivery problems in the appellants' neighborhood. There was no indication of any similar problem here.

Further, as an attorney who had received and even appealed forced assessments on her personal property account in the past, Ms. Mathes should have known approximately when to expect a notice of forced assessment in the mail.<sup>2</sup> The Assessment Appeals Commission has pointedly proclaimed that "[a] taxpayer who has been properly notified of an assessment change...cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business or lack of awareness of the manner or necessity of appeal." Transit Plastic Extrusions, Inc. (Lewis County, Tax Years 1990 & 1991, Final Decision and Order, June 29, 1993), p. 2.

Respectfully, in light of these considerations, the administrative judge is not persuaded that the appeal concerning the valuation of Account Number 111221 should be accepted under the reasonable cause statute.

#### Order

It is, therefore, ORDERED that Tangible Personal Property Account Number 130235 be revalued for tax year 2007 as follows:

APPRAISAL	ASSESSMENT
\$10,206	\$3,062

It is further ORDERED that the taxpayer's appeal of the assessment on Tangible Personal Property Account Number 111221 be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order";** or

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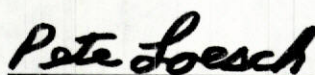
<sup>2</sup>Tenn. Code Ann. section 67-5-903(c) requires the assessor to notify a taxpayer of a forced assessment "at least five (5) calendar days before the local board of equalization commences its annual session."



2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3<sup>rd</sup> day of March, 2008.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Peggy D. Mathes, Attorney  
Assistant Metropolitan Attorney Jenny L. Hayes

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